101ST CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
101-27

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1989

APRIL 13, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. FORD of Michigan, from the Committee on Post Office and Civil Service, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 20]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 20) to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 4, strike lines 17 and 18 and insert the following: "appointed under section 1211(b) of this title."

Page 11, immediately before line 9, insert the following:

> (4) Section 1216(c) of title 5, United States Code (as amended by the Whistleblower Protection Act of 1989) is amended—
>
> (A) by striking paragraph (1); and
>
> (B) in paragraph (2), by striking "(2) If" and inserting "If".

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Page 13, line 8, strike "of" and all that follows through "Board" in line 9 and insert "(appointed under section 1211(b) of title 5, United States Code)".

Explanation of Committee Amendments

The committee amendments to H.R. 20 are technical in nature and necessitated for conformity with the Whistleblower Protection Act of 1989 as signed into law on April 10, 1989 (P.L. 101-12). Specifically, the amendments do two things. First, they clarify that the Special Counsel referred to in the bill is the independent Special Counsel appointed pursuant to section 1211(b) of title 5, United States Code. Secondly, the amendments delete reference to specific penalties which the Special Counsel was authorized to seek for violations of the Hatch Act as included in the Whistleblower Protection Act of 1989. H.R. 20 deletes those specific penalties and instead permits the Merit Systems Protection Board to impose a broad range of disciplinary actions for Hatch Act infractions.

Purpose

The purpose of this legislation is to restore to Federal civilian employees, including employees of the United States Postal Service, their right to participate voluntarily, as private citizens, in the political processes of the Nation, and to protect such employees from improper political solicitations.

Committee Action

On January 3, 1989, Congressman William Clay (D-Missouri) for himself and Congressman Frank Horton (R-New York) introduced H.R. 20, the Federal Employees' Political Activities Act of 1989. The legislation was referred to the Committee on Post Office and Civil Service. On April 12, 1989, the Committee on Post Office and Civil Service, by a recorded vote of 22-1, a quorum being present, ordered H.R. 20 favorably reported after agreeing to three amendments offered by Mr. Sikorski.

As introduced, H.R. 20 is identical to the Federal Employees' Political Activities Act of 1987 which Mr. Clay introduced in the 100th Congress (H.R. 3400). Following hearings on Hatch Act reform (Serial No. 100-16), the Committee on Post Office and Civil Service ordered H.R. 3400 favorably reported (H. Rept. 100-376). H.R. 3400 subsequently passed the House on November 17, 1987 by a vote of 305 to 112.

Summary of the Bill

H.R. 20 states that it is the policy of Congress that employees should be encouraged to fully exercise their right to participate or not participate in the political processes of the Nation. The exercise of this right should be free and without fear of reprisal or penalty.

The bill contains a prohibition against on-the-job political activity. Federal employees cannot engage in any political activity while on duty, in a Federal facility, in the uniform of a Federal job, or while using any vehicle owned or leased by the Government. The rule against on-the-job political activity applies to most employees

in Executive agencies and to employees in the competitive service not in the executive branch.

The bill also contains prohibitions against official coercion. Federal employees cannot use official authority or influence to interfere with the result of an election or to intimidate any individual to vote or not to vote, to give or withhold a contribution, to to engage or not engage in any political activity. Federal employees may not use official information for any political purpose, unless the information is available to the public. Federal employees may not give a political contribution to a superior, or give, receive, or solicit a political contribution in a Government building. Federal employees may not solicit, accept, or receive a contribution from, or give a political contribution to, a person who has or is seeking a contract with the employee's agency, is regulated by the agency, or has interests which may be affected by the performance of the employee's duties. The various criminal prohibitions relating to elections and political activities contained in Chapter 29 of title 18, United States Code, are conformed.

Other than these restrictions, Federal employees can engage in any legal political activity off the job. They may run for partisan political office without taking leave, as long as the campaigning does not interfere with the performance of their duties. An employee who requests leave without pay or annual leave for the purpose of running for office can only be denied such leave by agency management based on the exigencies of the public business.

The Special Counsel is authorized to issue regulations and to enforce the administrative prohibitions concerning political activity. Actions brought by the Special Counsel would be brought under the general disciplinary action procedures of 5 U.S.C. 1215. The Merit Systems Protection Board could impose any penalty provided by that section. Possible penalties include fines, debarment from employment, removal, and reprimand.

STATEMENT

"Active and informed citizens are vital to the effective functioning of our constitutional system. All of us have an obligation to study the Constitution and participate actively in the system of self-government that it establishes. This is an obligation we owe, not only to ourselves, but to our children and their children." So President Reagan stated on September 16, 1987, on the steps of the West Front of the United States Capitol to commemorate the bicentennial of the United States Constitution.

The committee subscribes to the former President's words. The committee believes American democracy flourishes when its citizens are actively involved in the political system. The very word "democracy" is rooted in two Greek words: demos, meaning people, and kratia, meaning rule. The people rule by involving themselves in the political processes of the Nation. American democracy does not force citizens to participate in the political process, but democracy would atrophy without citizen participation. And, just as American democracy does not force citizens to participate, neither should it exclude any group of citizens from participation.

Yet, despite this underlying tenet of democracy, a large class of citizens have been legally excluded from full participation in the political process. These citizens—Government employees—have been prohibited by the Hatch Act from involving themselves in partisan politics.

The Hatch Act was passed in 1939 during a period of rapid expansion of the Federal Government. The stated justification was to ensure that the impartiality of the Government would be beyond reproach. Yet, fear played a major role in the passage of the Hatch Act. Many people were concerned that an incumbent President would have an army of campaign workers in the civil service. And, they were concerned that Federal employees could use the power and authority of their positions to force others to vote for, work for, and contribute to the incumbent.

These various justifications for the Hatch Act are not without foundation today. The question facing the committee is, however, essentially the same as faced the Supreme Court when it first ruled on the constitutionality of Hatch Act restrictions in 1947. As Justice Reed, writing for the majority, said, "[T]his Court must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of Government." *United Public Workers* v. *Mitchell,* 330 U.S. 75, 96 (1947). The committee finds that the "supposed evil of political partisanship by classified employees of Government" is neither so imminent nor so apparent as to justify an intrusion into individual rights and democratic values as profound as the Hatch Act imposes. As Justice Black said in his dissenting opinion in *Mitchell*, "legislation which muzzles several million citizens threatens popular government, not only because it injures the individuals muzzled, but also, because of its harmful effect on the body politic in depriving it of the political participation and interest of such a large segment of our citizens." *Mitchell* at 111.

History of Restrictions of Political Activity

Developments prior to 1939

Throughout the history of American public service, there have been numerous attempts to restrict the political activities of Federal employees. Many of the restrictions came as a result of abuses in the appointment of Government workers. The question of how involved Government employees should be in political activities has arisen on numerous occasions during the history of the Republic.

A key factor in the evolution of laws to restrict Federal employees from participating in the political process has been the tension between the accountability of a spoils system and the neutral competence of a merit system. The spoils system was a kind of "winner take all" system. The political party that won the election won the right to appoint its own people to most jobs in the bureaucracy. The merit system, initially implemented in the Federal civil service with the passage of the Pendleton Act in 1883, led to a career public service, selected on merit, and insulated from partisan politics.

One of the earliest attempts to curtail Government workers' political activities came in 1791. An amendment was proposed in the House to limit the political activity of inspectors of distilled spirits. The amendment was defeated in the House by a vote of 37 to 21 on the grounds that, "this clause will muzzle the mouths of freemen, and take away their use of their reason." (2 Annals of Cong. 1877 (Jan. 21, 1791)).

In 1801, President Thomas Jefferson tried to limit the political activities of civil servants. He issued a circular articulating the principle of political neutrality for Federal employees. Jefferson's exhortation was insufficient and he was forced to remove a number of employees from office for engaging in political activity, particularly activity against his administration (see Vaughn, Robert G., "Restrictions on the Political Activities of Public Employees: The Hatch Act and Beyond", George Washington Law Review, Vol. 44, No. 4, May 1976).

Secretary of State Daniel Webster in 1841 proscribed, under penalty of removal, "partisan interference in popular elections" in order that elections "shall be free from undue influence of official station and authority," and "opinion shall also be free among the officers and agents of the Government." (Fowler, "Precursors of the Hatch Act," 47 Miss. Valley Hist. Review 253 (1960).) Webster's action did not proscribe voluntary partisan political activity.

After the Civil War, a reform movement with the goal of ending patronage developed. Led, after its formation in 1880, by the National Civil Service Reform League, the reform movement blamed lack of merit selection for an inefficient civil service. On the local level, the reform movement tried to break big city political machines. On the national level, the reform movement advocated a merit civil service system, free of patronage and insulated from the political process. Following the assassination of President James A. Garfield by Charles Guiteau, a New York insurance salesman and evangelist who thought himself entitled to be named consul to Paris, Congress embraced the reform agenda. The Pendleton Act, setting merit selection as the paradigm for the civil service, passed in 1883. Less known is the fact that sections 11 through 15 of the Pendleton Act covered political assessments, solicitations, subscriptions, or contributions by and from employees.

Thus, certain limitations on political activities were part and parcel of the merit system from its inception. The types of restriction contained in the Pendleton Act are now without controversy and are reenacted in H.R. 20. Rather, it is the additional limits on political participation by civil servants which have been the source of controversy.

The restrictions on political participation were clearly also part of the agenda of the reform movement. Theodore Roosevelt, the darling of the New York City reform movement, became a Commissioner of the Civil Service Commission in 1889. In the 1894 Report of the Commission, Commissioner Roosevelt suggested what the policy ought to be:

> A man in the classified service has an entire right to vote as he pleases, and to express privately his opinions on all political subjects; but he should not take any active

> part in political management or political campaigns. (Eleventh Annual Report of the Civil Service Commission, 20–21 (1894))

When Roosevelt later became President, he had an opportunity to turn his views into reality. President Roosevelt issued Civil Service Rule I, which prohibited all persons in the classified service from taking "an active part in political management or political campaigns." On June 3, 1907, President Roosevelt issued an Executive order amending Rule I to provide:

> No person in the Executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof.
>
> Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns.

The Civil Service Commission was responsible for enforcing Civil Service Rule I. Over 3,000 civil service rules were issued concerning individual cases, thereby creating a substantial body of case law. When Congress developed the Hatch Act in 1939, it took much of the wording from the decades of civil service rulings.

Passage of the Hatch Act

On May 27, 1938, a special Senate committee was appointed to investigate charges that Federal public assistance monies were being used to influence Federal and local elections. The allegations arose from a Pulitizer prize winning series of articles by Thomas Stokes of the Scripps-Howard chain. Stokes documented that supervisors in the Works Progress Administration (WPA) had coerced Federal employees and relief workers to contribute to the reelection campaign of Senator Alben Barkley in 1938. The special Senate committee, chaired by Senator Morris Sheppard of Texas, substantiated the abuses revealed by Stokes.

It is important to note that the findings of the Sheppard Committee related to coercion and improper use of official authority. The WPA scandal was not directly related to voluntary participation by Federal employees in partisan politics.

While concern about political coercion was clearly present, another factor catalyzed passage of the Hatch Act. A coalition of Republicans and conservative Southern Democrats was becoming increasingly worried about the direction in which President Roosevelt and his New Deal programs were taking the country. The Vice President, John Nance Garner, was allied with these forces. Moreover, Garner was particularly concerned about suggestions that Roosevelt might seek an unprecedented third term. That an army of relief workers might be deployed to perpetuate Roosevelt's Presidency was frightening. The Hatch Act was seen as a way to undermine Roosevelt's chances to run again in 1940.

By 1938, New Deal relief programs had expanded the Federal work force considerably. Many needy persons placed on the Federal payrolls were not in classified positions and, therefore, were not

subject to the regulations governing partisan political activities administered by the Civil Service Commission. Only about 32 percent of the Federal work force was in the competitive civil service at the time.

The Sheppard committee reported to the Congress on January 3, 1939. Two months later, Senator Carl Hatch of New Mexico introduced legislation (S. 1871) incorporating the committee's recommendations into a single measure forbidding any involvement in the affairs of a political organization by Federal employees working in non-policymaking positions.

The Hatch Act (53 Stat. 1147) contained various criminal provisions which were finally enacted and codified in title 18, United States Code. The Senate bill also prohibited Federal administrative or supervisory employees from using their official authority to influence an election or from taking an active part in political campaigns. The bill also provided that an employee retained the right to vote and the right to privately express opinions on political subjects.

No public hearings were conducted on the bill nor was there much comment on the bill when it reached the Senate floor where it passed by unanimous consent.

The bill was subject to vigorous debate in the House. Most of the discussion was over section 9(a), prohibiting Federal employees from taking an active part in political management or in political campaigns. While most of the rest of the bill merely restated prohibitions which had existed since the Pendleton Act, section 9(a) served to codify Civil Service Rule I and the Civil Service Commission issued rulings under it. The Hatch Act passed the House August 2, 1939.

Justifications for political restrictions

Restrictions on political activities came about because of the nature of the spoils system. Debate has also centered on: whether the efficiency of the Federal Government and its merit system would be compromised by a politically active bureaucracy; whether such political activity would result in increased responsiveness; wheher such political freedom would result in the creation of an unstoppable political machine; and, whether the rights of Federal workers to be free from political coercion and the rights of the general citizenry to be free from intimidation could be adequately protected if the bureaucracy were allowed to be involved in partisan politics.

Much of the argument in favor of Hatch Act reform centers on the historical conditions under which the original Hatch Act was passed. Testifying before the Subcommittee on Civil Service, Representative William Clay (D-Missouri) argued that the Hatch Act was a reaction to fear of abuse by President Roosevelt:

> A review of the circumstances surrounding the enactment of the Hatch Act in 1939 leads to the inevitable conclusion that the legislation was a congressional overreaction to fear of the growing influence of President Franklin D. Roosevelt during a period of rapid growth of the Federal bureaucracy. It was an overreaction by the Congress to

> abuses, not of voluntary political activity, but to coercion and kickbacks by employees and recipients in Federal relief programs. At that time, less than 32% of the Federal workforce of 950,000 was under the classified merit system. Today's Federal workforce has approximately 3 million employees of which 78.6% are covered by the merit system. Today, we have a well-entrenched merit system that protects both employees and the public from political influence and abuse.

Federal employee groups, as well, argue that, even if the Hatch Act could have been justified in 1939, it no longer can be. There were some well documented abuses in the system, there were fewer organizations to protect employees and there was not a national media to act as a watch dog. Today, the same abuses would not be possible. In a statement before the Subcommittee on Civil Service, Robert Tobias, President of the National Treasury Employees Union, stated why the Hatch Act is outdated:

> The Act was originally intended to correct alleged abuses of the merit system that arose with the growth of the Federal government and the popularity of President Franklin D. Roosevelt during the New Deal. Many things have changed since then, however. The Federal government has tripled in size to meet the needs of our country's expanding population, and Federal employees now work under a system of merit protection which was designed to protect employees from political coercion. Clearly, the law which may have been necessary in 1939 is no longer appropriate.

Mr. Tobias' views were echoed by Hugh Bates, President of the National Association of Postmasters:

> It is frustrating for us Federal employees because the Postal Service and the civil service of 1987 bear little resemblance to those of 1939. The arguments that were used for passing the Hatch Act are not valid today. Nearly all Federal employees are brought into the Government under the merit system. We are not political cronies, we are professionals who administer the Government and deliver its services. We will not thwart either Congress' or the President's policies or allow politics to influence the performance of our jobs. The bills contain provisions to protect employees from being coerced into performing their jobs in such a way as to solely benefit a political party. The Inspectors General who have been installed in many Federal agencies can help safeguard against manipulation of employees.

Supreme Court rulings on Hatch Act

The Supreme Court has twice considered the constitutionality of the Hatch Act, and, while the Court has upheld the Act by narrow margins, both times the Court has suggested that Congress may change the law.

United Public Workers of America v. *Mitchell,* 330 U.S. 75 (1947) was the first constitutional challenge to the Hatch Act. The Court, in a four to three decision, rejected the claim of unconstitutionality brought against the Hatch Act. The case centered around George Poole, a skilled laborer at the Mint, who had served as a ward committeeman of the Democratic Party and was politically active on election day as a worker at the polls. As required by the Act, Poole was removed from his position by the Civil Service Commission for having taken an active part in political management and in political campaigns.

In upholding the Act, the Court reasoned that Congress' purpose in passing the Hatch Act was "to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service," and that the Act was a "legitimate means to such an end." The Court, noting that the Act infringed upon freedoms guaranteed by the First, Ninth, and Tenth Amendments, applied a balancing test, weighing the intrusion on constitutional rights against a "congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of Government." The Court based its reasoning on a popular notion of the time—"the principle of required political neutrality for classified public servants as a sound element for efficiency." Yet the Court left open the door for reform stating, "another Congress may determine that on the whole, limitations on active political management by Federal personnel are unwise.

Justice Black, in a scathing dissent, argued the law was unconstitutional on its face. He emphasized that participation in political activities was a liberty guaranteed in the First Amendment and, thus, any law restricting it should be "narrowly drawn to meet the evil aimed at" and should affect only the "minimum number of people imperatively necessary to prevent a grave and imminent danger to the public." Justice Black argued that the Hatch Act was too broad, ambiguous and uncertain in its consequencs to be made the basis for removing deserving employees from their jobs. He criticized the Act as "legislation which muzzles several million citizens," and threatens popular government by deriving it of the "political participation and interest of such a large segment of its citizens."

A second constitutional challenge to the Hatch Act reached the Supreme Court in 1972, with *U.S. Civil Service Commission* v. *National Association of Letter Carriers,* 413 U.S. 548 (1973). In *Letter Carriers,* six Federal employees, a union, and certain Democratic and Republican political committees challenged the Hatch Act as violative of the First Amendment. The district court had invalidated the statute on the basis that it was "impermissibly vague and overbroad when measured against the requirements of the First Amendment." *National Association of Letter Carriers, AFL-CIO* v. *U.S. Civil Service Commission,* 346 F. Sup. (D.C.D.C. 1972). The U.S. Supreme Court in a 6 to 3 decision reversed the district court ruling, thus sustaining the constitutionality of the Hatch Act.

The Supreme Court approached the statute with a presumption of constitutionality, stating that its task was not to destroy the Act but "construe it, if consistent with the will of Congress, so as to comport with constitutional limitations."

Underlying the Court's decision to sustain the Hatch Act was an adherence to the policy that "it is in the best interest of the country, indeed essential, that Federal service should depend upon meritorious performance rather than political service"—a policy which resulted from American experience with a spoils system of Government employment.

Like the Court in *Mitchell,* the Court in *Letter Carriers* acknowledged that the appropriateness of the Hatch Act may be limited to a certain political era. The Court stated: "perhaps Congress at some time will come to a different view of the realities of political life and Government service," and suggested that "Congress is free to strike a different balance than it has."

The dissent by Justice Douglas harshly criticizes the law for the chilling effects that its vague and generalized prohibitions have on Federal employees. The dissent calls for a revision of the Hatch Act, describing its effect on Federal workers as "self-imposed censorship imposed on many nervous people who live on narrow economic margins."

Developments since 1960

In October 1966, the Congress established an independent, bipartisan commission to investigate and study Federal laws which limit the participation of public employees in political activities. The Commission on Political Activity of Government Personnel conducted extensive nationwide public hearings. It also commissioned a major study on the attitudes of Federal employees.

The Commission proposed to expand, within limits, the extent of political activity by Federal employees while strengthening the sanctions at all levels against coercion and misuse of official position. The final report of the Commission on Political Activity of Government Personnel stated:

> In the opinion of this Commission, the best protection that the Government can provide for its personnel is to prohibit those activities that tend to corrode a career system based on merit. This requires strong sanctions against coercion. It also requires some limits on the role of the Government employee in politics. It was the unanimous view of the Commission members, however, that these limits should be clearly and specifically expressed, and that beyond those limits political participation should be permitted as fully as for all other citizens.

The Commission further found that existing laws relating to political activities were confusing to Federal employees. For example, the Commission's survey revealed that of 10 political activities listed, 64.1 percent of Federal employees could properly recognize only five or fewer activities that were either permissible or prohibited. The vast majority of Federal employees (65.5 percent) felt that the law governing political activities should be changed.

In 1974 Congress lifted most of the restrictions on the political activities of employees of state or local governments funded in whole or in part with Federal funds. A 1940 law (54 Stat. 767) had extended Hatch Act type restrictions to this class of employees. Under the Federal Election Campaign Act Amendments of 1974

(Public Law 93-443), Federal restrictions on these state and local employees were eased, leaving only a restriction on running for partisan elective office.

During the 94th Congress, both Houses of Congress passed, but President Ford vetoed, H.R. 8617, repealing many of the prohibitions on political activity contained in the Hatch Act. The Committee on Post Office and Civil Service reported (H. Rept. 94-444) the bill after conducting eleven days of public hearings. The House passed the bill by a vote of 288 to 119 on October 21, 1975. The Senate passed a similar measure (S. Rept. 94-512) on March 11, 1976 by a vote of 47 to 32. President Ford vetoed the measure (H. Doc. 94-449), contending it would politicize the civil service. The veto was sustained on April 29, 1976, when the House fell 26 votes short of the two-thirds necessary to override the veto.

During the 95th Congress, the House again passed Hatch Act reform (H.R. 10, H. Rept. 95-292) after negotiating a version of the legislation acceptable to President Carter. The Senate, however, never considered the legislation because the Committee on Governmental Affairs failed to report the bill to the Senate floor.

State and Local Hatch Act Restrictions

In 1974 Congress lifted most of the restrictions on political activity by State and local government employees whose positions are funded in whole or in part by Federal monies. The Federal Election Campaign Act of 1974 (Public Law 93-443), amended the Federal Hatch Act as it applied to State and local employees by removing the prohibition against taking an active part in political management or campaigns, but left intact the prohibition against being a candidate for elective office in a partisan election.

As a result of the 1974 enactment, only three Federal restrictions remain in effect for State and local government employees whose positions are funded in whole or in part by Federal funds. First, covered employees cannot use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office. Second, covered employees may not directly or indirectly coerce contributions from subordinates in support of a political party or candidate. Third, such employees may not be candidates for public elective office in a partisan election.

In 1983 the Subcommittee on Civil Service examined the changes which have occurred since 1974 with respect to State restrictions on political activity (See Committee on Post Office and Civil Service, Committee Print 98-9 (1983)). The subcommittee identified 14 States that had changed laws governing political activity on State and local employees since the enhancement of the Federal Election Campaign Act of 1974. Only one State, Wyoming, had increased restrictions on political activities of State and local government employees since 1974. Four States (Alabama, Arkansas, Nebraska, and North Dakota) passed laws which permitted employees to be candidates in partisan elections. Obviously, only employees whose positions are not funded in whole or in part with Federal funds are able to make use of this freedom

In 1987 the subcommittee sent questionnaires to the Attorneys General of the thirteen States which have liberalized their laws

since 1974 concerning the impact of the changes in the laws governing the activities of government employees in their States. In a May 5, 1987, letter to the Attorneys General, the subcommittee asked: "Specifically, has there been greater participation by public employees in State elections? Has there been an increase in coercion of employees? Has there been an increase in the number of prosecutions relating to violations of restrictions on political activity?"

Eleven of the thirteen Attorneys General responded. Broadly, the States found no adverse effects resulting from the changes in restrictions. Of the eleven Attorneys General responding, none reported any increase in prosecutions. Only one State, Alabama, reported any allegations of coercion. Six States were unable to provide any information on the effects of the changes in their State laws. Four States reported an increase in political participation by State employees. Again, the remaining States were unable to provide any information on political participation.

The Attorney General of Alabama, Don Siegelman, reported that:

> While, to my knowledge, there have been no complaints of coercion made to the State Personnel Board (the agency charged with receiving such complaints), there is an ongoing investigation in the Montgomery County Grand Jury concerning allegations of coercion with regard to political contributions. I do not know of any prosecutions related to violations of restrictions on political activity.

It is important to note that the restrictions prohibiting employees from coercing contributions from subordinates remained unchanged by the 1974 law. Many of the responses from Attorneys General were similar to that of Stephen E. Merrill of New Hampshire:

> The answer to your first two questions are necessarily based on general impressions. First, there is a general impression that the participation of public employees in state elections has increased somewhat in recent years but there is no way of knowing whether that increase is related to any change in state law. Second, there seems to be no evidence of increased coercion of public employees in recent years. The answer to your third question is based on objective information. The number of prosecutions relating to violations of restrictions on political activity has not increased as a result of the change in state laws.

The Attorneys General reported no adverse reactions as a result of the loosening of the restrictions on political activities of State and local government employees. Not one Attorney General voiced concern that by easing restrictions on State or local employees they had opened the door to coercion or impropriety.

Recent Hatch Act enforcement

With the enforcement of the Civil Service Reform Act in 1978 (P.L. 95–454), and the implementation of Reorganization Plan No. 2 of 1978, the Office of the Special Counsel (OSC), an independent office of the Merit Systems Protection Board, has been responsible for the investigative and prosecutorial authority of the Act. The

Special Counsel's authority over the Hatch Act was transferred from the former Civil Service Commission.

While H.R. 20 maintains the Special Counsel's investigative and prosecutorial authority, the recently enacted Whistleblower Protection Act of 1989 (P.L. 101-12), changes the status of the Office of Special Counsel. Pursuant to P.L. 101-12, the Special Counsel is no longer a subordinate office of the Merit System Protection Board, rather it is a separate and independent office altogether.

In 1985 the Special Counsel prosecuted three union presidents for Hatch Act violations. The three were on leave without pay to carry out their union duties. The Merit Systems Protection Boards (MSPB) ordered Mo Biller of the American Postal Workers Union, Kenneth T. Blaylock of the American Federation of Government Employees and Vncent R. Sombrotto of the National Association of Letter Carriers suspended from Federal employment for 60 days. The punishment had little impact as all three of the men had been on leave without pay for more than 15 years.

The Merit Systems Protection Board, in a written opinion, said it was "compelled to acknowledge that because of the peculiar circumstances of these cases, respondents will largely, if not entirely, escape discipline for their Hatch Act violations." The union presidents were accused of violating the Hatch act by "writing or publishing articles in their union magazines and other publications endorsing Democratic presidential candidate Walter Mondale or opposing the reelection of President Ronald Reagan" in 1984.

On appeal in two Federal circuit courts, the Board's order was reversed on findings that no Hatch Act violations had occured. *Blaylock* v. *United States Merit Systems Protection Board*, 851 F.2d 1348 (11th Cir. 1988); *Morris Biller and Vincent R. Sombrotto* v. *United States Merit Systems Protection Board*, No. 87-4076, slip op. (2d Cir. Dec. 16, 1988). Despite requests from the Merit Systems Protection Board and the Office of Personnel Management to appeal the court decisions to the Supreme Court, the Office of the Solicitor General declined the invitation.

The prosecution of Biller, Blaylock, and Sombrotto, on grounds which had never before been asserted, raised the issue of partisan enforcement of the Hatch Act. A number of Members of Congress pointed out that the intent of the Hatch Act was to prevent political coercion in the work place. Yet, employee coercion was not at issue in the actions of these three union presidents.

A review by the Subcommittee on Civil Service of Hatch Act opinions issued by the Office of Special Counsel between 1983 and June of 1987 found that during that period 164 warning letters were issued. In 128 cases, the political party was identified from the warning letter. 73 percent of all warning letters went to Democrats and only 19 percent went to Republicans. One-third of the warning letters went to employees who had allegedly become candidates for elective office. In cases concerning activities other than becoming a candidate for elective office, 82 percent of the warning lettes went to Democrats and only 13 percent went to Republicans.

Confusion over the regulations issued by the Office of Special Counsel elevated congressional interest in reform of the existing law. The subcommittee found that Government employees are often baffled over what is permissible and what is not. Some em-

ployees were rebuked for actions that were permissible for other employees. Many were afraid to take any political action at all.

Mary Fiolek, the wife of a letter carrier, ran for City Council in Erie, Pennsylvania. She wanted to use a family photograph which included her husband in her campaign literature. The Hatch Act regulations were ambiguous on whether this was permissible. She made several efforts to get a definitive answer, and she was told the safest thing to do was not to include him. As a result, her marital status became an issue in the election.

The subcommittee's review of Hatch Act opinions issued by the Special Counsel revealed some strange regulations relating to political signs and posters. According to Special Counsel's advisories, a Government employee can place a political advertisement on the family automobile so long as it is no larger than 15 inches by 30 inches. Yet, a sign may be placed in an employee's front yard only if it is no bigger than 14 by 22 inches. A political poster may be placed on an employee's front lawn as long as the poster is of the size freely distributed by the candidate's campaign headquarters.

Federal employees simply do not know what is allowed and what is not allowed. As Kenneth Blaylock, President of the American Federation of Government Employees, stated in testimony before the subcommittee:

> The existing law is rife with contradiction and confusion. Federal employees may speak publicly on political subjects, but not at a political gathering; they may attend a political convention, but not serve as a delegate; they may sign a nominating petition, but may not circulate it. The resulting confusion has a chilling effect and discourages even the limited participation now allowed under the law. A similar chilling effect is achieved when union leaders, who have been out of active Federal service for years are prosecuted under the Act.

The Office of Special Counsel's convoluted efforts to enforce the Hatch Act were a significant cause underlying the call to reform the Hatch Act.

Summary of Legislation

BASIC CONCEPT OF LEGISLATION

H.R. 20 is grounded in the concept that Federal employees should be free to engage in political activities on their own time but should not engage in any political activity on the job. This means that Federal employees can manage campaigns, solicit contributions, work on phone banks, and even run for office while off the job and away from the workplace. The clear line between on-the-job and off-the-job activities results in a statute which is easy to understand and straightforward to enforce.

MATTERS OF SPECIAL INTEREST

1. Coverage of postal employees

The bill provides precisely the same treatment for employees of the United States Postal Service and the Postal Rate Commission

as it does for employees in the executive branch. Indeed, the underlying policy of the bill is that all employees should be able to engage in the full panoply of political activity off-the-job. Because of the structure of the United States Code, however, the changes made affecting postal employees are accomplished by cross-reference.

2. Treatment of employees of the District of Columbia

Prior to the passage of the Home Rule Statute in 1973, Federal civil service laws treated most employees of the District of Columbia as Federal employees. Since that time, most Federal statutes providing for the terms and conditions of employment by the Government of the District of Columbia have been repealed. The Hatch Act is one statute which has not been changed. H.R. 20 changes the treatment of District employees. Instead of being treated as Federal employees, they will be treated like other employees of state and local governments. Insofar as their positions are funded in whole or in part with Federal funds, the restrictions of chapter 15 of title 5, United States Code, will apply.

3. Political purpose

The terms "political purpose" and "political activities" are used throughout H.R. 20. The Hatch Act, as now set forth in Subchapter III of Chapter 73 of title 5, United States Code, forbids employees from engaging in certain activities relating to partisan elections. H.R. 20 eliminates many of the existing restrictions on such political activities. Other activities which could be characterized as "political", such as petitioning Congress, involvement in citizen groups, or writing letters to the editor of a newspaper, are not in any way currently constrained by the Hatch Act, and the committee does not intend to constrain them under H.R. 20. Federal employees should be encouraged to let Members of Congress, other elected officials, and the public at large know their views on matters of public policy. A civil servant in coastal New Hampshire is as free as any other citizen to join a demonstration opposing construction of the Seabrook nuclear power plant. A Federal employee who wants to lobby his or her Senators to support aid to the contras in Nicaragua is free to do so under the Hatch Act and is free to do so under H.R. 20.

4. Candidacy for delegate to nominating convention

Section 7322(2) of title 5, as amended by H.R. 20, defines the term "candidate" in a manner similar to the way it is defined for purposes of the Federal Election Campaign Act of 1971 (P.L. 92-225), as amended. Section 7322(5) defines "elective office". Due to the varied nature of American political life, the bill makes no attempt to list all elective offices with precision. The committee intends, however, that the position of delegate to the nominating convention of a state or national political party is, for purposes of this legislation, an elective office where the method of selection as delegate is through an election or open caucus. Where delegates are selected by a state or local central committee, the position would not normally be considered an elective office.

5. Personal services

The term "political contribution" is defined to include personal services, such as volunteer work, performed in support of a candidate for purposes of the restrictions on the use of official influence contained in section 7323 and for purposes of the restrictions on solicitation contained in section 7324. However, in determining whether an individual is a candidate, for purposes of section 7324, the gift of personal services is not considered to be a "political contribution". The policy of the bill is that the restrictions on coercion and use of official influence should be interpreted broadly to prevent any activity that hints of impropriety. This means that it is illegal for a superior to accept voluntary services from an employee supervised. On the other hand, the mere acceptance of personal services, without more, should not serve to designate a Federal employee as a candidate for elective office. This means that the special rules governing leave for candidates do not apply unless the individual seeking the leave meets the other tests of being a candidate. The other tests are spelled out in the definition of the term "candidate".

6. Superior

Section 7322(4) of title 5, as amended by H.R. 20, defines the term "superior". The definition is intended to be broad. Any official who has the power to hire or fire, control or direct, supervise or appraise the work of an employee is considered to be a superior for the purposes of this Act. Hence, no one is an agency could contribute to the campaign of the head of that agency, because the head of the agency is the superior of every employee in the agency. On the other hand, the Assistant Secretary of Health of the Department of Health and Human Service would not ordinarily be considered to be a superior of an employee of the Social Security Administration.

7. Duties and responsibilities of one's position

Section 7323(d) of title 5, as amended by H.R. 20, clarifies the restriction on use of official authority contained in section 7323(a). Section 7323(a) is meant to prevent misuse of official authority to interfere with an election or to intimidate or influence a person to vote, contribute, or engage in political activity. A literal reading of section 7323(a), however, might preclude certain employees from performing their duties. For example, an attorney with the Federal Election Commission uses his or her official authority to influence individuals not to violate Federal election law. An officer of the U.S. Park Police might use official authority to command an individual not to hold a political rally on Federal park lands without a permit. Section 7323(d) states that these sorts of activities are not violations. What is a violation is a Federal official commanding someone to contribute to the President's reelection campaign or lose a Federal contract. The rule is one of reason.

8. Official information

Section 7323(b) prohibits the use of official information obtained in connection with Government employment for political purposes, unless the information is available to the general public. The use of

the modifier "official" is meant to distinguish information which the employee gains or has access to because of employment with the Government from information which the employee might learn from non-job related sources. In law, there is no concept of "official information" which is entitled to special protection. Whether information is discloseable under the Freedom of Information Act (5 U.S.C. 552) is irrelevant for purposes of determining whether the information is "official information" under this section. Similarly, whether information is classified under Executive Order No. 12356 is irrelevant for determining whether the information is "official information". Hence, under this section a Federal employee would be prohibited from passing an unreleased study to one candidate to help that candidate defeat an opponent. However, nothing in this section should be construed to prohibit a civil servant from bringing relevant, public information to the attention of a candidate. Moreover, a Federal employee may, off the job, utilize a publicly available Federal data base to produce a report which may be helpful to a candidate.

9. Union officials on leave without pay

Sections 8332(k)(1) and 8411(e) of title 5, United States Code, provide continuing retirement coverage for employees on approved leave without pay to serve as full-time officers or employees of organizations composed primarily of Federal employees. The code has similar provisions dealing with health and life insurance benefits for such employees. The employees in this category are officials of Federal labor organizations. For purposes of the restrictions on use of official authority, contained in section 7323 of title 5, as amended by H.R. 20, political activities of these union officials, acting in their capacities as union officials, should not be considered use of official authority. Section 7323 is aimed at ensuring that the power of the Federal government is not used, or does not appear to be used, to support any particular partisan political activity. The actions of union officials, acting as union officials, do not raise concerns about misuse of official authority.

10. Issuance of Special Counsel regulations

Under section 7327 of title 5, United States Code, as amended by H.R. 20, the Special Counsel has authority to issue regulations to implement the legislation. The bill sets broad policy guidance. Basically, the bill permits Federal employees to engage in the full range of political activities off-the-job and prohibits political activities on-the-job. Because of the enormous variety of possible political activities, the bill does not attempt to define the term "political activity". The Special Counsel should, by regulation, define, with precision, what is and what is not political activity.

These regulations should be issued for comment as soon as possible after the enactment of this bill. The regulations are, by nature, of broad public interest and should be issued under the notice and comment provisions of section 553 of title 5.

11. Defining "political activities"

In defining the term "political activity" by regulation, the Special Counsel should look first to the purpose served by the restric-

tion on on-the-job political activity. That purpose is to avoid the appearance that the Government is supporting a candidate. While a Federal employee canvassing for a candidate in the evening raises no specter that the Government is supporting that candidate, if that same Federal employee wears a political button while working at a post office window, it does raise that specter.

The definition of "political activity" must also take into account the basic First Amendment free speech rights of Federal employees, the activities permitted under the current Hatch Act, and the purposes to be served by this legislation.

12. Published endorsements

Under H.R. 20, Federal employees are perfectly free to support and endorse candidates on their own time. However, the committee is concerned that such endorsements could, under certain circumstances, raise the appearance that the Government or an agency thereof is involved in supporting a candidate. Therefore, the committee instructs the Special Counsel to include in the regulations to be issued under section 7327 a provision stating that Federal employees may sign and be listed in published endorsements of candidates. However, an employee signing such an endorsement may be identified only as a "Federal employee". An employee may not be identified in such published endorsements by position title or by the agency for which the employee works.

13. Union bulletin boards

Currently, many Federal agencies make bulletin boards available to Federal employee unions on which items of interest to the union members may be posted. One of the items usually posted on these bulletin boards is the union newsletter. Frequently, union newsletters contain a solicitation for members to contribute to the political committee of the union. An overly literal reading of H.R. 20 might hold that posting such a newsletter would be a violation of section 7324(a)(4)(B), concerning solicitations in Federal buildings, or section 7325(a)(2), concerning engaging in political activities in a Federal building. The committee does not intend that this legislation be construed in such a manner. Rather, the committee intends that the posting of union newsletters on bulletin boards, which has been allowed under existing law, continue to be allowed. Moreover, the distribution of union newsletters in a Federal building should continue to be permitted. On the other hand, direct person-to-person solicitations of funds at the worksite or on duty time clearly is prohibited.

14. Cars in government parking lots

Another literal reading of section 7325, as amended by H.R. 20, might hold that employees who park their own vehicles in Government parking lots may not have political bumper stickers on such vehicles. Such an interpretation would be unwarranted by the language of H.R. 20 and would be in conflict with the intent of the committee. While political bumper stickers are clearly forbidden on any vehicle owned or leased by the Government, they are not forbidden on an individual's car.

15. Knowledge requirement for violations

In sections 7324(a)(3), 7324(a)(4) and 7324(b)(1) of title 5, United States Code, as amended by H.R. 20, there is a requirement that a person "knowingly" commit an act. In other sections, there is no similar requirement. The use of the term "knowingly" relates to contributions to or from certain individuals, such as superiors or Government contractors. To prove violations of these sections, the Special Counsel must demonstrate that the employee knew of the special status of the other individual. An employee making telephone calls from a list of potential contributors to solicit funds from a campaign headquarters cannot be presumed to know the occupation of each individual called. Rather, the employee must have actual knowledge of the status of the individual solicited to fall afoul of the prohibition in section 7324(b)(1).

Moreover, the lack of the word "knowingly" in other restrictions in the bill does not mean that employees can be disciplined for negligent violations. Rather, the Special Counsel must demonstrate that the employee took the improper action with knowledge of what he or she was doing. In other words, a Federal employee is not in violation of section 7324(a)(1), forbidding a payment to another individual to refrain from voting, unless the Special Counsel can demonstrate that the payment was made for the forbidden purpose.

16. Buttons

Under current Hatch Act regulations, there is no Government wide restriction on the wearing of political campaign buttons. Each agency is free to regulate the issue. Many agencies permit only those employees who have no contact with the public to wear political buttons. The committee believes that wearing political buttons is political activity within the menaing of section 7325. Consistent with the overall policy of the bill, the regulations of the Special Counsel should provide that buttons may not be worn by employees in Government buildings and while on duty.

While section 7325(b) permits certain high level political appointees to engage in on-the-job political activity, the committee believes that it would be highly inappropriate for these individuals to wear political buttons or other political paraphernalia in Government buildings or while acting in an official capacity.

17. Use of rooms in federal buildings

Section 7325(a)(2) prohibits employees from engaging in political activities "in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof." Currently, employee organizations are permitted to use rooms in Government installations to conduct organizational activities. These rooms are used after the ordinary workday and are, typically, either rooms dedicated for use by the employee organization or conference rooms. The committee believes that the current practice should not be disrupted. Employee organizations should continue to be permitted to have meetings in Government rooms.

18. Nonpartisan voter registration drives

Currently, a number of employee organizations conduct nonpartisan voter registration drives in non-work areas of a Government building. Because of the non-partisan nature of this activity, such voter registration drives should not be considered political activity within the meaning of section 7325. As long as the voter registration effort is truly nonpartisan, it is not intended to be restricted by H.R. 20.

19. Worksite visits by candidates for office

The committee believes that it is in the interest of the Government and of public employees to have officials holding public office and candidates for such public office visit Federal worksites. Such a visit can convince the official or candidate of the value of the Government activity. The bill does not prohibit such visits, even during the period prior to an election.

20. Denials of requested leave

Section 7326 of title 5, United States Code, as amended by H.R. 20, provides that an employee shall be provided leave without pay or accrued annual leave for the purpose of being a candidate unless the exigencies of the public business require that the leave be denied. Subsection (c) requires that any denial be in writing and accompanied by a statement of the reasons for the denial. The only permissible reason for denial of leave is the press of public business. Leave may not be denied for any other reason.

21. Leave for service in office or other political activity

H.R. 20 provides clear procedures for requesting leave to become a candidate. It is silent on the granting of leave to serve in a political office or to engage in other types of political activities, such as managing a campaign. Agencies should treat these requests in the way that other requests for leave are treated. While leave may be denied for management reasons, it may not be denied because a manager disapproves of the political activity or the political views of the employee.

22. Requirement to take leave

Section 7326(d) of title 5, as amended by H.R. 20, states that an employee may not be required to take leave to run for office, "unless the activities relating to the candidacy interfere with the employee's performance of the duties of the position." If the employee's supervisor finds that the candidacy is interfering with the employee's performance, the supervisor should try to work out a suitable arrangement with the employee before taking any mandatory action. The employee's rights under current law to challenge any compulsory action, such as placing the employee on furlough, are preserved in H.R. 20.

23. Advisory opinions

Under current law, the Special Counsel has authority to issue advisory opinions interpreting the Hatch Act restrictions. The committee expects the Special Counsel to continue to do so. Employees

have every right to know what they are permitted or not permitted to do. Only through clear regulations and ample use of advisory opinions can this goal be met.

24. Penalties

The current Hatch Act contains a narrow range of available penalties, including a minimum of 30 days' suspension for any violation. This minimum penalty has probably deterred prosecution of some minor violations of the Act. Moreover, there is no reason for a unique set of penalties applicable only to violations of the rules governing political activities. Therefore, the committee has determined that the disciplinary provisions in 5 U.S.C. 1215 should apply to prosecutions brought under H.R. 20 and that the list of available penalties under that section should apply to violations of this Act as well. Possible penalties include fines, debarment from employment, removal, and reprimand.

25. Use of treasury funds for political activities

Section 7325(b) of title 5, United States Code, as amended by H.R. 20, provides that certain high level political officials can engage in political activities while on-the-job. This exception appears in the bill because these officials are considered to be continuously on duty. Without this exception, the language of section 7325(a) could be read to preclude political activity at any time by these individuals.

Despite the exception, however, the committee expects that most of the political activity that these officials engage in will be conducted off Government property and not during regular duty hours. Nevertheless, the bill does permit on-the-job political activity by these officials.

The one restriction is that the costs associated with the political activity cannot be paid with funds derived from the Treasury. The policy is that the taxpayers should not pay for political activities. When a cabinet secretary makes a trip to give a political speech, the candidate benefitting from the speech should pay all the costs of the trip. When a cabinet secretary makes a trip both to engage in official Governmental duties and to give a political speech, the costs should be allocated between the campaign and the Government. The committee does not expect that the pro rata portion of the salary of such an individual be reimbursed for time spent on political activities. Nor does the committee expect the cost of each incidental political call to be reimbursed to the Government. On the other hand, if a Government office is turned into a political boiler-room, all the costs associated with that activity should be reimbursed. The committee expects the President to continue to provide guidance to political appointees on what is proper and what is improper.

26. Employees presumed to be always on duty

Other than the specific officials listed in section 7325(b)(2) of title 5, as amended by H.R. 20, there are other officials who are presumed to be on duty at all times. Under section 6301(2)(xi) of title 5, United States Code, and the implementing regulations, Presidential appointees whose rates of pay do not exceed GS–18 and whose

responsibilities for carrying out the duties of their positions continue outside normal hours and while away from normal duty posts may be exempted from the Leave Act. Moreover, the Leave Act excludes a variety of other employees. In certain cases, these exclusions are based on the presumption that the position requires the employee to be on duty at all times. Nevertheless, in most cases, these individuals work regular duty hours. Under H.R. 20, these individuals are permitted to engage in political activities as long as they are not in a Government building or vehicle. The committee expects that these officials will continue to work their ordinary duty hours and perform responsibilities for the Government. On their own time, however, these individuals are free to engage in political activity. Exclusion from the Leave Act should not be the determining factor as to whether an employee is continuously on duty for purposes of section 7325.

27. Ambassadors

Section 7325(b) of title 5, United States Code, as amended by H.R. 20, permits certain on-the-job political activities by certain high level political appointees, but not by any official whose position is located outside the United States. In other words, political appointees who are stationed outside the United States are prohibited from engaging in any on-the-job political activity.

Ambassadors serving overseas fall within this category. Under the provisions of H.R. 20, ambassadors, because of the special nature of their position, are prohibited from engaging in any political activity on duty or in a Government building. The committee intends that ambassadors should be considered to be on duty at all times because they serve as representatives of the United States Government to foreign nations. Whether an ambassador is appointed from the ranks of the career foreign service or is a political appointee, his or her job remains the same; to represent the interests of the United States. For ambassadors to become actively engaged in partisan political activities is inappropriate.

Section Analysis

SECTION 1—SHORT TITLE

Section 1 states the title of the bill is the "Federal Employees' Political Activities Act of 1989."

SECTION 2—POLITICAL ACTIVITIES

Section 2(a) amends subchapter III of chapter 73 of title 5, United States Code, which concerns political activities of Federal employees. Unless otherwise noted, section references are to sections of subchapter III of chapter 73 as amended by section 2(a) of the bill. All existing provisions of subchapter III of chapter 73 of title 5, United States Code, are replaced by new provisions.

The twenty-seven numbered items in the section of this report entitled Matters of Special Interest contain detailed explanations of a number of provisions of the bill. These items should be read in association with the section analysis to understand fully the committee's intent with respect to each provision.

Section 7321—Political participation

Section 7321 states that it is the policy of Congress that employees should be encouraged to exercise their right to participate or to refrain from participation in the Nation's political processes, unless that right is expressly limited by law. Employees should be free to exercise such right without fear of penalty or reprisal.

Section 7322—Definitions

Section 7322 defines certain terms used in subchapter III of chapter 73.

The term "employee" is defined to mean an individual employed or holding office in an Executive agency (other than the General Accounting Office) or in a position within the competitive service which is not in an Executive agency. The President and Vice President are excluded from the definition of "employee". The term "employee" does not include members of the uniformed services. The General Accounting Office has an independent personnel system which incorporates, by reference, the political activities restrictions of subchapter III of chapter 73. (See section 3(b)(1)(C) of Public Law 96-191.) The term "Executive agency" is defined in section 105 of title 5, United States Code.

Section 2(e) of the bill ensures that employees of the United States Postal Service and the Postal Rate Commission are covered by the same restrictions which apply to other Federal employees covered by the bill.

The term "candidate" is defined to mean an individual who seeks nomination or election to any elective office, whether or not the person is elected. An individual is deemed to be a candidate if the individual has taken the necessary action to qualify, such as by filing the papers required under state law, or if the individual has received political contributions or made expenditures or consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election. For the purposes of this definition, however, acceptance of personal services does not constitute a political contribution.

The term "political contribution" means any gift, subscription, loan, advance, or deposit of money or thing of value, made for a political purpose. It includes a contract or promise to make a contribution, whether the promise is enforceable or not. The definition, includes a payment by a third party of compensation for personal services rendered on behalf of a candidate or political organization without charge. Also, the definition includes the provision of personal services for any political purpose.

The term "superior" is broadly defined to include any employee who exercises supervision of, or control or administrative direction over, another employee.

The "elective office" means any public office or office of a political party or affiliated organization for which a candidate must stand for election.

The term "person" is broadly defined to include individuals, coroprations, and associations, as well as state, local, and foreign governments.

The term "Special Counsel" refers to the Special Counsel appointed under section 1211(b) of title 5, United States Code.

Section 7323—Use of official influence or official information; prohibition

Section 7323 prohibits employees from using or attempting to use official influence or official information for partisan political purposes. Subsection (a)(1) states that an employee may not use, directly or indirectly, his or her official authority or influence to interfere with or affect the result of any election. Subsection (a)(2) states that an employee may not use, directly or indirectly, his or her official authority or influence to intimidate, threaten, coerce, command, or influence (A) any individual to vote for or against a particular candidate or to vote or not to vote, (B) any person to give or withhold a political contribution, or (C) any person to engage or not to engage in any political activity.

Subsection (b) of section 7323 provides that an employee may not use or permit the use of any official information for any political purpose, unless the official information is available to the general public. For this prohibition to be operative, the employee must have obtained the official information through or in connection with the employee's employment.

Subsection (c) of section 7323 states that the term "use of official authority of influence" includes promising to confer or actually conferring any benefit or effecting or threatening any reprisal or taking, recommending, or approving any personnel action. The term "benefit" includes compensation, grants contracts, licenses, and rulings.

Subsection (d) of section 7323 states that nothing in section 7323 should be construed to apply to actions which are taken to carry out the duties and responsibilities of an employee's position.

Section 7324—Solicitation; prohibition

Section 7324 contains certain prohibitions relating to political contributions. Paragraph (1) of subsection (a) states that an employee may not give or offer a political contribution to any individual to vote for or against a candidate or a measure, such as a referendum, or to vote or refrain from voting in an election. Paragraph (2) states that an employee may ot solicit, accept, or receive a political contribution to vote or refrain from voting in an election or to vote for or against any candidate or measure.

Paragraph (3) prohibits an employee from knowingly giving or handing over a contribution to a superior. Paragraph (4) contains two prohibitions. Subparagraph (A) of paragraph (4) forbids an employee from knowingly soliciting, accepting, or receiving a political contribution from another employee or a member of the family of another employee with respect to whom the employee is a superior. Subparagraph (B) prohibits an employee from soliciting, accepting, or receiving a political contribution in a Government room or building. A Government room or building includes any room or building occupied in the discharge of official duties by an employee or any an individual who receives compensation for services from money derived from the Treasury. This latter category applies to rooms occupied by Federal government grantees and contractors.

This board prohibition on the site of a solicitation is intented to guard against subtle forms of intimidation which might be present when Government employees solicit political contributions.

Subsection (b)(1) provides a list of persons from whom and to whom an employee may not solicit or give political contributions. The list includes any person who has or is seeking to obtain contracts or other business or financial relations with the agency for which the emplolyee works. Also included are persons who conduct operations or activities which are regulated by the employee's agency and persons who have interests which may be substantially affected by the performance of the employee's official duties.

Subsection (b)(2) and (b)(3) provide that the Special Counsel shall prescribe regulations which exempt certain employees from the restrictions contained in subsection (b)(1). Subsection (b)(2) requires regulations to exempt an employee from the prohibition on a political contribution to or from an individual who has a familial or personal relationship with the employee if the employee complies with disqualification requirements prescribed by the Special Counsel. Subsection (b)(3) requires regulations to exempt from the prohibition on political contributions any contribution from a person in situations in which the facts and circumstances indicate that there would be no adverse effect on the itegrity of the Federal government or on the public's confidence in the integrity of the Federal government.

Section 7325—Political activities on duty, etc.; prohibition

Section 7325 prohibits political activities while on duty Subsection (a) provides that an employee may not engage in political activity while on duty, in a room or building occupied in the discharge of official duties by an individual employed by the Government, while wearing a uniform or official insignia identifying the office or position of the employee, or while using any vehicle owned or leased by the Federal government.

Section 7325(b) provides that certain high level political appointees may engage in political activities otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States. The high level political appointees covered by this exception must meet two tests. The first test is that the duties and responsibilities of the position of the individual must continue outside normal duty hours and while away from the normal duty post. The second test is that the employee must either (1) be paid out of an appropriation for the Executive Office of the President; or (2) be appointed by the President, by and with the advice and consent of the Senate, occupy a position located within the United States, and be involved in determining policies to be pursued by the United States in its relation with foreign powers or in the nationwide administration of Federal laws. This language is similar to the current exception to the prohibition on political activity contained in 5 U.S.C. 7324(d). The exception in current law covering "the head or assistant head of an executive department or military department" is deleted as being unnecessary because such individuals are covered by the exception for "an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located

within the United States, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws."

Section 7326—Candidates for elective office; leave

Section 7326 concerns the availability of leave for employees who become candidates for elective office. Subsection (a) provides that an employee who is a candidate shall, upon request, be granted leave without pay to permit the employee to engage in activities relating to the candidacy. Subsection (b) provides that an employee who is a candidate shall, upon request, be granted accrued annual leave to permit the employee to pursue the candidacy. Accrued annual leave shall be in addition to leave without pay provided in subsection (a). Subsection (c) provides that a request for leave without pay or for accrued annual leave may be denied if the exigencies of the public business so require. A denial of requested leave must be made in writing and must include a statement of reasons for the denial. Subsection (d) states that an employee may not be required to take leave to be a candidate unless the activities relating to the candidacy actually interfere with the employee's performance of the duties of his or her position.

Section 7327—Regulations

Section 7327 provides that the Special Counsel shall prescribe necessary rules and regulations. The committee expects the Special Counsel to follow the notice and comment procedures of the Administrative Procedure Act in issuing these regulations.

Technical and conforming amendments—Title 5

Section 2(b) of H.R. 20 makes certain technical and conforming amendments to other provisions of title 5, United States Code. Subsection (b)(1) amends section 3302(2) by deleting references to sections in subchapter III of chapter 73 which have been deleted by this bill.

Subsection (b)(2)(A) inserts a reference to leave without pay granted under section 7326(a) in section 8332(k)(1), relating to coverage under the Civil Service Retirement System for employees on leave without pay; section 8706(c), relating to life insurance coverage for employees on leave without pay; and section 8906(e)(2), relating to health insurance coverage for employees on leave without pay. Subsection (b)(2)(B) makes a similar amendment to section 8411(e) relating to retirement coverage under the Federal Employees Retirement System.

Subsection (b)(3) conforms the section analysis for subchapter III of chapter 73 of title 5, United States Code, to the amendments made by section 2(a) of the bill.

Subsection (b)(4) amends section 1216(c) of title 5, United States Code, to clarify disciplinary action which the Merit Systems Protection Board may order in response to Hatch Act violations.

Technical and conforming amendments—Title 18

Section 2(c) makes certain conforming amendments to title 18, United States Code. Paragraph (1) amends section 602 of title 18, relating to solicitation of political contributions. Paragraph (1)(C)

adds a new subsection (b) to section 602. The new subsection provides that the criminal prohibition on solicitation of political contributions only applies to the activity of employees covered under H.R. 20 to the extent that the activities violate section 7323, relating to misuse of official influence or official information, or section 7324, relating to solicitation of political contributions. Subsection (c)(2) makes a similar conforming amendment to section 603 of title 18, concerning making political contributions. Subsection (c)(2) adds a new subsection (c) to section 603 stating that the criminal restriction on political contributions only applies to activities of employees covered under H.R. 20 to the extent that the activities violate section 7324, relating to solicitation of political contributions.

Technical and conforming amendments—Voting Rights Act

Subsection 2(d) of H.R. 20 makes a conforming amendment to the provisions of the Voting Rights Act of 1965 (Public Law 89-110) relating to restrictions on examiners appointed to administer the Voting Rights Act.

Applicability to postal employees

Section 2(e) of H.R. 20 provides that employees of the United States Postal Service and of the Postal Rate Commission are covered by the amendments made by section 2 of H.R. 20 and that the Special Counsel has authority to enforce the law with regard to these employees. This special provision on applicability to employees of the Postal Service and the Postal Rate Commission is made necessary by the status of these organizations. The terms and conditions of employment for employees of the Postal Service and the Postal Rate Commission are set forth in title 39, United States Code.

SECTION 3—EFFECTIVE DATE

Section 3(a) provides that the amendments made by the Act shall take effect 120 days after the date of enactment. The Special Counsel's authority to issue regulations under section 7327 of title 5, is effective on the date of enactment. Section 3(b) provides that the amendments made by the Act shall not affect any penalty imposed or any action to enforce a penalty under the preceding provisions of law. Section 3(c) provides that no provision of the Act shall affect any proceedings filed on or before the effective date of the Act. Orders under those proceedings and appeals from such proceedings shall be conducted as if the Act had not been enacted.

JURISDICTIONAL MATTERS

In some instances provisions of the bill pertain to matters within the jurisdiction of the Committee on the Judiciary. That committee has been consulted and correspondence with the committee chairman concerning these matters is set forth below:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC, April 10, 1989.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed is a copy of the bill H.R. 20, the "Federal Employees' Political Activities Act of 1989", which will be considered by the Committee on Post Office and Civil Service on April 12.

Section 2(c) of the bill contains amendments to sections 602 and 603 of title 18, United States Code, to conform those provisions to the provisions of subchapter III of chapter 73 of title 5, United States Code, as amended by the bill.

I fully recognize that the title 18 amendments are within the jurisdiction of the Committee on the Judiciary. However, in the interest of expediting consideration of this important legislation by the House, I respectfully request that you refrain from requesting sequential referral of the bill to the Committee on the Judiciary.

Your cooperation with respect to this matter will be deeply appreciated.

With kind regards,
Sincerely,

WILLIAM D. FORD, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, April 10, 1989.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
Cannon House Office Building, Washington, DC.

BILL: Thank you for your letter concerning H.R. 20, the "Federal Employees' Political Activities Act of 1989." which the Committee on Post Office and Civil Service will consider on April 12, 1989.

As your letter states, the title 18 amendments contained in the bill are within the jurisdiction of the Committee on the Judiciary. Since these amendments merely seek to conform the applicable sections of title 18 to the provisions of the bill amending subchapter III of chapter 73 of title 5, United States Code, I am willing to waive sequential referral of the bill to the Committee on the Judiciary, without, of course, relinquishing the jurisdiction of the Judiciary Committee over these matters.

With every good wish, I am your friend.
Sincerely,

JACK BROOKS, *Chairman.*

COST

The cost estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, as amended, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 12, 1989.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 20, the Federal Employees' Political Activities Act of 1989, as ordered reported by the House Committee on Post Office and Civil Service, April 12, 1989. We estimate that implementation of this bill would cost the federal government about $100,000, mostly in fiscal year 1990.

H.R. 20 would amend current law to allow federal employees to participate in certain political activities. The bill would require the Office of Special Counsel to issue regulations that implement the provisions of the bill, and we estimate that the resources necessary to do that would cost about $100,000. It is not likely that additional funding would be requested for this purpose.

No cost would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

C.G. NUCKOLS
(For Robert D. Reischauer).

OVERSIGHT

Under the rules of the House, the Committee on Post Office and Civil Service is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of its hearings, investigations, and consideration, the committee concluded that there is ample need and justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 20 will have no inflationary impact on the national economy.

ADMINISTRATION VIEWS

Set forth below are the views of the Department of Justice and the Office of Personnel Management:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, April 12, 1989.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 20, the "Federal Employees' Political Activities Act of 1989." The Department strongly opposes legislation that would reduce the current restrictions on partisan political activity by federal civil servants. Senior advisers to the President would recommend a veto of this bill if it were presented to the President.

Our opposition is grounded in a firm belief that it is impossible to allow partisan campaigning by the vast majority of federal employees and, at the same time, protect two fundamental principles central to the operations of the Executive Branch of the Federal Government: the impartial administration and enforcement of federal laws, and the advancement of federal civil service based solely on merit.

If enacted, H.R. 20 would repeal substantial portions of the Hatch Act, 5 U.S.C. § 7324, which forbids most active partisan political activities on the part of federal employees (and certain state employees whose positions are funded by federal grants).[1] We believe that such a course would be a serious mistake because we remain convinced that it would result in a tragic re-politicization of the federal civil service to the detriment of the vast majority of federal employees as well as to the public policies and programs that they implement. This, in turn, would seriously jeopardize public confidence in government and increase demands on already overburdened prosecutorial resources.

I. THE HATCH ACT

While the purpose of H.R. 20 is to restore the right to participate in the Nation's political processes to federal employees, in fact, federal workers already have significant political rights under the current Hatch Act. For example, they may:

—register to vote and vote;
—contribute money to partisan political campaigns;
—express their views in private and in public (though not in a concerted way to elicit support for a candidate or party);
—run as an independent candidate in certain partisan contests in designated areas with a high concentration of federal employees;
—attend political conventions and rallies as a spectator;
—assist in nonpartisan voter registration drives;
—campaign for or against political referendum questions;
—participate as a nonpartisan poll-watcher or election judge;

[1] In 1974, Congress repealed most of the federal restrictions imposed by the 1940 "Little Hatch Act" on partisan campaigning by state and local employees who administer federal programs. See 5 U.S.C. § 1501 et seq. By this time, most of the States had enacted legislation protecting public employees against political abuses and, thus, the federal bar had become superfluous. We are aware of no major policy shift at the state level backwards, toward the universally discredited political "spoils" system. On the contrary, the trend today in public administration at the state and local level continues toward a more merit-based, and less political, civil service.

—attend political fund-raising functions;
—wear political buttons (off duty or, subject to certain agency restrictions, on duty); and
—participate in nonpartisan campaigns.

However, federal employees may not take an active role in partisan political activities. Specifically, the Hatch Act forbids employees to:

—run as partisan candidates in elections for public office;
—hold office in political clubs or parties;
—solicit or handle political contributions or organize partisan fund-raising activities;
—make speeches or engage in other campaign activities to elect partisan candidates;
—circulate partisan nominating petitions; and
—distribute campaign material in a partisan election.

II. H.R. 20, THE "FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1989"

If it were enacted into law, H.R. 20 would amount to a virtual repeal of the Hatch Act. It would *permit* federal employees to:

—run for public office in a partisan election;
—hold office in a political party;
—distribute partisan campaign literature and solicit votes;
—organize and participate in political meetings;
—publicly endorse partisan candidates and urge others to support them; and
—solicit political contributions under certain circumstances.

All of these activities could be engaged in individually or collectively. Employees of an agency could form off-duty, off-premises political clubs and work together toward political ends.

In section 7321, H.R. 20 adopts as the policy of the Congress the principle that federal employees should be encouraged to participate fully—or to refrain from participating—in the political process.[2] This statement of policy is precisely the reverse of the spirit of the Hatch Act, which is premised on a lesson learned over centuries—that active partisan political participation by career government employees is inimical to the interest of the public in the effective and impartial administration of the laws.

The Hatch Act was passed in 1939, but its roots are much deeper. For example, the political activities of some of those in the Executive Branch disturbed Thomas Jefferson, who issued an order stating in part that "[t]he right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice, but it is expected that he will not attempt to influence the votes of others nor take part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it." [3]

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[2] The statute attempts to express a policy that is neutral on the question of political participation by recognizing the employee's "right" to "refrain from participating in the political processes of our Nation." This statement of policy is unconvincing as it is nonsensical to imagine that Congress truly intended that federal employees should be encouraged "to exercise fully" the negative act of not participating in the political process.

[3] 10 J. Richardson, Messages and Papers of the Presidents 98 (1899), quoted in *United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548, 557 (1973). In

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In spite of Jefferson's concerns about mixing partisan politics and regular federal service, the political spoils system flourished in succeeding decades and remained the rule until after the Civil War. In 1871, Congress authorized the President to establish a civil service of federal employees.[4] This was followed by the Civil Service Act of 1883, known as the Pendleton Act,[5] which in Rule 1 declared that "no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service" and that "no person in said service has any right to use his official authority or influence to coerce the political action of any person or body." [6]

Problems with political activity by government workers continued, and the Civil Service Rules were frequently revised. In 1907, President Theodore Roosevelt caused Rule 1 to be amended to prohibit executive civil servants from using their "official authority or influence for the purpose of interfering with an election or affecting the result thereof." [7] Finally, the experience of the 1936 and 1938 elections convinced Congress that the prohibition against taking an active part in political management and campaigns should be extended to the entire federal service.[8] The bill introduced to remedy this problem became the Hatch Act, named for its main proponent, Senator Carl Hatch (D-NM).[9] It has since been amended on several occasions, but its essential features have remained intact for almost 50 years.

The principle that the *privilege* of federal employment constitutionally justifies restrictions on partisan political activity also has been twice expressly recognized by the Supreme Court. In *United Public Workers of America* v. *Mitchell*, 330 U.S. 75, 98 (1947), the Court upheld the constitutionality of the Hatch Act and noted that, "Congress recognizes danger to the [civil] service in that political rather than official effort may earn advancement and to the public in that governmental favor may be channeled through political connections." In *United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548, 565-67 (1973), it noted that "[n]either the right to associate nor the right to participate in political activities is absolute," and found that Congress was justified in concluding that "substantial barriers should be raised against the party in power—or the party out of power, for that matter—using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns."

While H.R. 20 includes several provisions, §§7323 and 7324, intended to prevent abuses, they would be virtually impossible to enforce effectively, and could invite a flood of litigation by disgruntled employees. These prohibitions would add little other than con-

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his opinion, dismissing a constitutional challenge to the Hatch Act as a violation of the First Amendment, Justice White presented a concise history of the Act, *id.* at pp. 557-63, from which this discussion is largely drawn.

[4] 16 Stat. 514.

[5] 22 Stat. 403.

[6] 22 Stat. 404.

[7] Twenty-fourth Annual Report of the Civil Service Commission 104 (1908), cited in *Letter Carriers, supra*, 413 U.S. at 559.

[8] Earlier civil service rules had been confined to the competitive classified service. *Id.*

[9] 53 State. 1147.

fusion to existing statutes which make certain kinds of coercion and misuse of authority a criminal offense.[10]

It is important to emphasize that the Department's role in matters involving political corruption of public personnel and programs is generally confined to criminal prosecution of aggravated violations of federal criminal statutes. See, e.g., Chapter 29 of Title 18 of the United States Code. The development of factually significant cases in this area suffers from two major problems. The first problem lies in the fact that individual victims of patronage schemes rarely come forward, either because the victims agree with the politics of the person pressuring them or are part of the same political machinery, or because the relative "cost" of submission on an individual level is low (e.g., stuffing political mailings or purchasing a $50 fund-raising ticket) compared to the possible cost of complaining and displeasing their supervisors (and thus possibly jeopardizing their jobs).

The second major problem which the Department must overcome to prosecute successfully these types of crimes is the fact that political threats and intimidation are rarely communicated in clear and unambiguous terms. The issue of coercion is invariably subtle. The prosecutor must therefore attempt to identify additional witnesses who can testify that they also received similar "threats" from the identified suspect. Our experience over the years is that when patronage abuses are reported they generally involve isolated instances, and often disgruntled employees, who complain of adverse job consequences by their supervisors because of their failure to comply with political demands imposed upon them. Such one-on-one-witness cases are not conducive to criminal prosecution in federal court. The absence of large numbers of federal prosecutions of patronage corruption thus does not indicate that the problem does not exist, but that it is generally extremely hard to prove.

The experience which this Department has had over the years enforcing the criminal laws dealing with illegal patronage practices has demonstrated quite graphically that there is a definite—and sinister—link between lack of civil service protections, on the one hand, and the occurrence of abuse on the other. The dynamics by which most government offices operate—and the fact that all government offices are in the last analysis subordinate to the political process—inevitably leads to the strong temptation on the part of many senior public administrators to use subtle, and often overt pressure to transform the rank and file implementors of public programs and policies into political cadres. It is imperative that these forces be checked. The fact that such abuses are rare in the federal system, but not uncommon in many state and local government agencies, is a telling testament to the wisdom, efficacy, need, and purpose of the present federal Hatch Act.

Several examples of patronage abuses at the state and local level which have been investigated by this Department in the very recent past will illustrate the magnitude of the problem the Hatch Act has successfully kept from the federal door step:

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[10] *See, e.g.*, 18 U.S.C. §§ 595, 598, 600, 601, 602, 603, 606, and 607.

In 1975, Congressman J. Edward Roush of Indiana testified before a House subcommittee in support of increased penalties under 18 U.S.C. §§ 600 and 601, at which time he provided the Congress with several examples of specific written demands from the party in power in his home State to rank and file government personnel (many of them firemen, road laborers, and the like) for the political donation of a percentage of their government salaries.

In 1985, a Special Federal Grand Jury in the Northern District of Illinois (Chicago) issued a report on the dynamics of the fraudulent election practices for which Chicago has until recently been infamous. After several years of hearing testimony, and after returning over 65 indictments charging Chicago officials with fraudulent voting practices, this grand jury determined that the driving force behind voter fraud in Chicago was the quest for patronage—e.g. the power of a winning political faction to control the jobs of rank and file municipal personnel and award benefits to its "friends". This vicious patronage system produced corrupt government, and required aggressive political work by even the most mundane public employees in order to obtain—or retain—municipal jobs.

The County Commissioners in Clark County, Indiana were indicated and convicted in Indianapolis during 1986 for overtly threatening a large group of highway laborers with loss of local County jobs if they did not agree to make political contributions to the party in power. Several laborers who refused to give were either summarily fired, or simply left their jobs on their own accord knowing that termination was the inevitable consequence of refusing to go along with such demands. This investigation also uncovered several other situations where Clark County employees—including at least one paramedic—were punitively transferred to jobs sites that were far removed from their homes and children because of the employees' lack of support for the incumbent political faction.

During recent months, the Criminal Division has transferred to major patronage matters to the Office of Special Counsel (OSC) for administrative enforcement under the so-called "Little Hatch Act" (5 U.S.C. §§ 1501 et seq.), after extensive criminal investigations failed to produce sufficient evidence to support criminal patronage cases—mainly for the reasons summarized previously in this letter. Both of these matters involved superior political appointees soliciting political contributions—usually in the form of dinner tickets—from clerks and administrative personnel. In one of these cases OSC succeeded in obtaining meaningful penalties (including debarment from future public employment) against the Director of Personnel of the Akron Municipal Housing authority and two of her subordinates. See *Special Counsel* v. *Parnell,* 37 M.S.P.R. 184 (1988). In the other case, OSC is presently seeking similar penalties against several political and senior supervisory employees of the Niagara Frontier Transportation Authority for doing much the same thing. In both these instances, OSC has been successful in obtaining administrative sanctions against plainly anti-social behavior largely because the Little Hatch is on the books, and the evidentiary requirements of this administrative statute are far less demanding than those applicable to criminal proceeding under statutes such as 18 U.S.C. §§ 600, 601 and 595.

As a result of OSC's recent successes in this regard, the Criminal Division is actively engaged at the present time in seeking ways to include OSC in the overall enforcement of the federal patronage laws on the local and State level. Accordingly, the number of administrative cases such as the ones just discussed can be expected to increase in the near future—if, of course, H.R. 20 does not pass and the Hatch Act remains an effective enforcement tool.

This recent history supports our firm conviction that any relaxation of the Hatch Act's politicking ban will substantially diminish the protections which federal employees currently enjoy against political pressure, which affording no realistic expectation that the void thus created can be filled by the federal criminal justice system. The Department of Justice remains convinced that nothing short of an absolute bar on partisan political activities by federal civil service employees will adequately protect the public's interest in the fair and impartial administration of government programs and policies and the employees themselves from more or less subtle pressure by their superiors. Violations of the criminal laws outlined above are notoriously difficult because coercion in the workplace is hard to prove. Attempted coercion usually occurs out of sight of any witnesses, when none other than the alleged victim and perpetrator are present. The line between conduct that amounts to pressure and conduct that does not is very fine. Experience has shown that the only way to prevent abuse in this area is by declaring the entire field off-limits.

Under section 7323(a) of H.R. 20, federal employees would be prohibited from using their official authority or influence to affect or interfere with the result of an election, and would be subject to penalties for violations.[11] The use of "official authority or influence" is defined to include intimidation by threats, commands, influence or coercion, as well as later reprisal.

Section 7323(b) forbids the use of "official information" for political purposes unless such information "is available to the general public." Unfortunately, this provision will not effectively limit the unfair use of official information. There may be circumstances in which a government official has access to relevant, "public" information collected in a more manageable format for government use, but not readily available to the general public. Although it is unclear whether H.R. 20 would permit the use of public information compiled for government use and at government expense, access to such information could be a clear advantage in a political campaign. For example, an official at the Bureau of the Census running for office, or managing another's campaign, could enhance his (or his candidate's) chances at the polls through his easy access to relevant statistics which, although available to the public, are not easy to collect and analyze independently or are very costly to acquire. This individual also might be inclined to devote his energies to those projects in which he is officially involved which might be helpful or useful to his political ends.

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[11] These provisions would add nothing to the current body of federal law which criminalizes the political abuse of federal personnel and programs. *See e.g.*, 18 U.S.C. §§ 595, 598, 600, 601, 602, 603, 606, and 607.

Employees also might be subject to pressure from others involved in campaigns to divulge useful information. Although the rules are intended to prohibit such activities, most people are not capable of compartmentalizing their lives to the extent that they would be able, for example, to seal off their extensive knowledge of foreign trade negotiations during the hours that they are actively involved in campaign strategy for a candidate interested in trade issues.

Section 7323(c) forbids either promising to confer or conferring any benefit, or threatening to effect or effecting any reprisal, or taking or recommending any personnel action through exercise of official authority or influence. While this section serves a laudable purpose, it could open the floodgates to endless litigation both by disgruntled federal employees and disappointed contractors or grant applicants. For example, any employee who is passed over for promotion by a supervisor allied with a political party different from his own could allege that it was an illegal political "reprisal." In the case of those outside government, subsection (c)(1), by specifically including the "deprivation of any compensation, grant, contract, license, or ruling" under the heading of reprisals would invite every disappointed contractor, license or grant applicant, or anyone else outside the government with a colorable claim of "political discrimination" to come into court. The opportunities for making such claims would presumably be boundless, since any number of the federal officials and employees with whom these private contractors or applicants dealt could be avowed activists in their chosen political parties. Further, it is unclear in either case whether the officials or employees would be sued in their individual capacity or in their official capacity, or both, and whether the government would stand ready to indemnify them for damages assessed against them, or to carry the expense of their defense.

Not only could those who failed to receive the desired government benefit sue, but those who alleged that another contractor or applicant received the contract, grant, or license as a political benefit would wind up in court. Proving or refuting such claims not only would be difficult, but would so expose the politicized nature of the federal bureaucracy as to erode any confidence remaining in the general public. Subparagraph (d), which asserts that "[n]othing in this section shall be considered to apply with respect to any actions if, or to the extent that, such actions are taken in order to carry out the duties and responsibilities of one's position," would do nothing but compound the problem of proof of political intent in these lawsuits, since the language of that section does nothing more than outline the defense or counterclaim that each federal defendant would assert when sued.

Section 7324 is perhaps the most troubling provision of H.R. 20. It would permit federal employees to solicit political contributions within certain limits. Contributions could not be offered, solicited or accepted in order to effect an individual's vote. Further, supervisors would be forbidden to solicit or accept contributions from their subordinates, and all employees would be prohibited from soliciting contributions on government premises. Finally, employees could not knowingly solicit or accept a political contribution from current or potential government contractors or from anyone who "has

interests which may be substantially affected by the performance or nonperformance of the employee's official duties."

Even thus limited, this ill-conceived proposal is very troubling. Federal employees would be allowed to solicit or accept political contributions from the general public, and from co-workers, or employees from other agencies, so long as the solicitation did not take place on government premises. Coercion is not dependent upon hierarchy. Further, such violations are difficult to uncover and almost impossible to prove. As noted above, shakedowns rarely take place in public, and victims are rarely willing to come forward.

Section 7325 of the bill would prohibit political activities while employees are engaged in official duties, in uniform, present in government premises, or using a government vehicle. This provision, however, is riddled with exceptions. Since the prohibition would apply only within federal buildings or while employees were "on duty," employees at lunch outside the building presumably would be unrestricted. Employees could also engage in political activities immediately before and after the work day—approaching fellow workers on the way to and from the office, for instance.

Section 7326 would allow a federal employee to run for partisan political office, while continuing to work for the government so long as the activities relating to the candidacy did not interfere with the performance of his duties. If the employee's campaign activities would interfere, he would be entitled to take accrued annual leave. If the employee did not have enough accrued leave, he or she would be entitled to take unpaid leave. A leave request could be denied only if "the exigencies of the public business so require."

This provision is unduly generous at the taxpayer's expense. It would permit an employee to retain important benefits, such as job security, pension, and insurance benefits, which he enjoys as a member of the federal payroll. An employee who is granted leave without pay for an extended period, or who takes accrued annual leave, may not be replaced by another worker and has the right to return to his former employment. Employees must be allowed to conduct a campaign, while continuing on the job, "unless the activities relating to the candidacy interfere with the employee's performance of the duties of the position". They must be granted leave unless a determinatin is made that "the exigencies of the public business" require it to be denied. Both of these standards are ambiguous and are an open invitation to litigation. A finding by a supervisor that an employee's campaign is adversely affecting his work could trigger a political reprisal case under § 7323(c)(2), as could the denial of a leave application.[12]

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[12] Another disturbing aspect of the bill is the extremely broad definition of "candidate" in § 7322(2). A "candidate" is defined as any individual who seeks nomination for election, or election, to any elective office, whether or not the individual is elected. An individual would be considered to seek nomination or election if he had taken action to qualify for nomination or election, or received any political contribution other than personal services, or made any campaign expenditure or consented to another receiving any political contribution or making any expenditure in his behalf. This definition of "candidate" conflicts with the definition in the Federal Election Campaign Act, 2 U.S.C. § 431(2). Among other things, H.R. 20 omits the $5000 threshold on contributions, which would make it substantially easier for an employee to invoke a candi-

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In addition to the serious policy and practical concerns discussed above, H.R. 20 raises constitutional concerns insofar as it limits the ability of most senior political appointees to engage in political activity. For example, section 7325 would place sweeping restrictions on the ability of senior presidential appointees to engage in "political activity" while "on duty". The term "political activity" is nowhere defined in the bill. We take little comfort from the fact that this prohibition does not apply in the case of high level appointees and presidential aides (those paid from the Executive Office of the President appropriation or appointed with the advice and consent of the Senate), if "the costs associated with that political activity are not paid for by money derived from the Treasury of the United States". See § 7325(b)(1). This qualification is of very uncertain value given that appointees' salaries are paid by the Treasury, and given that a wide variety of official activity of these appointees might be regarded as "political". There is, for example, no suggestion in the proposal that this term was intended to include only the kinds of partisan campaign activities for which appropriated funds may be unavailable under existing law. Restrictions on the partisan political activity of such high level government officers is questionable under both Article II of the Constitution (as an impediment to the exercise of legitimate Executive authority),[13] and the First Amendment.[14]

CONCLUSION

In sum, H.R. 20 would lead to a tragic re-politicization of the federal workforce. In addition to the specific concerns outlined above, the overall effect on the general public's confidence in the fair and impartial administration of the laws might well be devastating. For example, if it appears that a candidate of Party A has misappropriated funds, it will not inspire confidence to learn that the local U.S. attorney's office charged with investigating the allegation is headed by that candidate's campaign manager. If a federal agency's employees' PAC endorses a presidential candidate, and he loses the election, the public will wonder how faithfully that department will carry out the new President's programs. If an agency manager goes on record supporting a candidate who proves successful at the polls, and subsequently that agency manager receives a big promotion, it will make the public cynical. The head of the Federal Election Commission could be the National Chairman of one political

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date's privileges and protections under H.R. 20 than under current law. Since a number of privileges, such as the right to take leave without pay or use accrued annual leave attach once an individual is deemed a candidate, this broad definition could permit individuals without much effort or commitment to invoke the special privileges and protections of this law.

[13] Supreme Court precedent establishes that Congress may not interfere with the President's ability to carry out his constitutional responsibility to execute the laws. See, e.g., *Hart* v. *United States*, 118 U.S. 62 (1886); *United States* v. *Klein*, 79 U.S. (13 Wall.) 128 (1872), holding unconstitutional congressional attempts to interfere with the President's pardon power. Even when Congress acts pursuant to its appropriations power, its authority is not absolute. Congress may not, for example, use its appropriations power to establish a religion, *Flast* v. *Cohen*, 392 U.S. 83, 104-105 (1968), or to diminish the compensation of federal judges, *United States* v. *Will*, 449 U.S. 200 (1980). By the same token, Congress' appropriations authority may not be used to intrude upon the President's Article II powers.

[14] See, e.g., *Branti* v. *Finkel*, 445 U.S. 507, 519 (1980) (recognizing the distinction between ministerial and policymaking officials); *Elrod* v. *Burns*, 427 U.S. 347, 367-69 (1976) (recognizing that different First Amendment considerations apply to policymaking officials as opposed to nonpolicymaking employees).

party or the other. The list could go on and on. Two principles central to the operation of the Executive Branch—the nonpartisan administration and enforcement of federal laws, and the advancement in federal service based solely on merit—would certainly be threatened and could well be extinguished. Safeguards against real abuse would be virtually unenforceable. H.R. 20 would sound an unfortuante retreat into the worst aspects of public administration from the last century, and is an open invitation to political corruption.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report and that enactment of H.R. 20 would not be in accord with the program of the President.

Sincerely,

DICK THORNBURGH,
Attorney General.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
OFFICE OF THE DIRECTOR,
Washington, DC, Apr. 13, 1989.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Office of Personnel Management on H.R. 20, the "Federal Employees' Political Activities Act of 1989."

That bill is virtually identical to H.R. 3400 as passed by the House in the 100th Congress. We must, therefore, reiterate that we are strongly opposed to the changes in the Hatch Act proposed in the current bill. If H.R. 20 were to reach the President's desk, his senior advisors would recommend its disapproval.

Althoug the bill does prohibit the use of official authority or information for political purposes, and restricts the solicitation and exchange of political contributions, these provisions alone are inadequate to insulate employees from pressure to engage in other political activities for purposes of employment security or advancement. Moreover, permitting partisan involvement makes an employee vulnerable to indirect influence to support actively the party or candidate favored by his superiors. Thus, voluntary political participation, if permitted, could become required participation.

Under current law, it is well known that Federal and Postal Service employees cannot serve partisan political purposes. These employees are secure in the knowledge that they need not respond to political requests or suggestions. Eliminating the prohibitions against partisan political management and partisan political campaigning would destroy this protective fabric.

The intrusion of partisan politics into the Federal civil service and the Postal Service, if only in appearance, would also be detrimental to merit concepts and employee morale. Partisan participation on an individual basis is innocuous on its face. However, widespread political involvement would lead to public identification of Federal employees and Postal workers with the aspirations of polit-

ical parties and candidates, and the injection of partisan considerations into the Federal civil service and the Postal Service. In addition, participation in partisan political activities would require a considerable investment of time and energy, and foster competition for advancement based on active support of a particular party or candidate. This type of political involvement clearly would undermine the independence and integrity of the Federal civil service as well as the Postal Service, detract from the efficient administration of business, and have an adverse effect on the public perception that Federal and Postal employees provide efficient service to all members of the community without regard to political considerations. Finally, such involvement also could lead to the erroneous perception, if nothing else, that political participation occurred during working hours and at the taxpayers' expense.

The current restrictions on partisan political participation are indispensable to the efficiency, integrity, and independence of both Federal and Postal employees. Moreover, they provide the most significant protection against political coercion and the encroachment of political influence within the Federal Civil Service as well as the Postal Service.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 20 would not be in accord with the program of the President.

Sincerely,

CONSTANCE HORNER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

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SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

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§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

(a) * * *

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(c)[(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity pro-

hibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

(2)] If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved.

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PART III—EMPLOYEES

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Subpart B—Employment and Retention

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, SELECTION, AND APPOINTMENT

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§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, [7203, 7321, and 7322] *and 7203* of this title.

Each officer and individual employed in an agency which the rules apply shall aid in carrying out the rules.

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Subpart F—Labor-Management and Employee Relations

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CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

[SUBCHAPTER III—POLITICAL ACTIVITIES

[7321. Political contributions and services.
[7322. Political use of authority or influence; prohibition.
[7323. Political contributions; prohibition.
[7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.

[7325. Penalties.
[7326. Nonpartisan political activity permitted.
[7327. Political activity permitted; employees residing in certain municipalities.
[7328. General Accounting Office employees.]

SUBCHAPTER III—POLITICAL ACTIVITIES

7321. Political participation.
7322. Definitions.
7323. Use of official influence or official information; prohibition.
7324. Solicitation; prohibition.
7325. Political activities on duty, etc.; prohibition.
7326. Candidates for elective office; leave.
7327. Regulations.

* * * * * * *

[SUBCHAPTER III—POLITICAL ACTIVITIES

[§ 7321. Political contributions and services

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

[§ 7322. Political use of authority or influence; prohibition

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

[§ 7323. Political contributions; prohibition

[An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

[§ 7324. Influencing election; taking part in political campaigns; prohibitions; exceptions

[(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

[(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

[(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

[(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

[(d) Subsection (a)(2) of this section does not apply to—

[(1) an employee paid from the appropriation for the office of the President;

[(2) the head or the assistant head of an Executive department or military department;

[(3) an employee appointed by the President, by and with the advise and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws:

[(4) the Mayor of the District of Columbia, the member of the Council of the District of Columbia, or the chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

[(5) the Recorder of Deeds of the District of Columbia.

[§ 7325. Penalties

[An employee or individual who violates section 7324 of this title shall be removed from position, and funds appropriated for the postions for which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

[§ 7326. Nonpartisan political activity permitted

[Section 7324(a)(2) of this title does not prohibit political activity in connection with—

[(1) an election and the preceding campaign of none of the candidates is to be nominated or elected at the election as representing a party any of whose candidates for presidential elector received votes in the last preceeding election at which presidential electors were selected; or

[(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

[§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of

the railroad in respect to political activities involving that municipality.

[(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to who section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the major or voters are employed by the Government of the United States; and

[(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

[§ 7328. General Accounting Office employees.

[The preceding provisions of this subchapter shall not apply to employees of the General Accounting Office.]

SUBCHAPTER III—POLITICAL ACTIVITIES

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or refrain from participating in the political processes of our Nation.

§ 7322. Definitions

For the purposes of this subchapter—

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the General Accounting Office; or

(B) a position within the competitive service which is not an Executive agency;

but does not include a member of the uniformed services;

(2) "candidate" means any individual who seeks nomination for election, or election, to any elective office, whether or not the individual is elected, and, for the purpose of this paragraph, an individual shall be considered to seek nomination for election, or election, to an elective office, if the individual has—

(A) taken the action required to qualify for nomination for election, or election; or

(B) received any political contribution (other than any personal services described in paragraph (3)(D)) or made any expenditure, or has given consent for any other person to receive any political contribution (other than any such personal services) or make any expenditure, with a view to bringing about the individual's nomination for election, or election, to that office;

(3) "political contribution"—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political or affiliated organizaiton, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose;

(4) "superior" means any employee who exercises supervision of, or control or administrative direction over, another employee;

(5) "elective office" means any elective public office and any elective office of any political party or affiliated organization;

(6) "person" includes any individual, corporation, trust, association, any State, local, or foreign government, any territory or possession of the United States, or any agency or instrumentality of any of the foregoing; and

(7) "Special Counsel" means the Special Counsel appointed under section 1211(b) of this title.

§ 7323. Use of official influence or official information; prohibition

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of—

(1) interfering with or affecting the result of any election; or

(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

(A) any individual for the purpose of interfering with the right of any individual to vote as the individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

(B) any person to give or withhold any political contribution; or

(C) any person or engage, or not to engage, in any form of political activity.

(b) An employee may not directly or indirectly use or attempt to use, or permit the use of, any official information obtained through or in connection with his employment for any political purpose, unless the official information is available to the general public.

(c) For the purpose of subsection (a) of this section, "use of official authority or influence" includes—

(1) promising to confer or conferring any benefit (such as any compensation, grant, contract, license, or ruling) or effecting or threatening to effect any reprisal (such as deprivation of any compensation, grant, contract, license, or ruling); or

(2) taking, directing others to take, recommending, processing, or approving any personnel action.

(d) Nothing in this section shall be considered to apply with respect to any actions if, or to the extent that, such actions are taken in order to carry out the duties and responsibilities of one's position.

§ 7324. Solicitation; prohibition

(a) An employee may not—

(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(3) knowingly give or hand over a political contribution to a superior of the employee; or

(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

(A) from another employee (or a member of another employee's immediate family) with respect to whom the employee is a superior; or

(B) in any room or building occupied in the discharge of official duties by—

(i) an individual employed or holding office in the Government of the United States; or

(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

(b)(1) In addition to the prohibitions of subsection (a) of this section, an employee may not knowingly solicit, accept, or receive a political contribution from, or give a political contribution to, any person who—

(A) has, or is seeking to obtain, contractual or other business or financial relations with the agency in which the employee is employed;

(B) conducts operations or activities which are regulated by that agency; or

(C) has interests which may be substantially affected by the performance or nonperformance of the employee's official duties.

(2) The Special Counsel shall prescribe regulations which exempt an employee from the application of paragraph (1) of this subsection with respect to any political contribution to or from an individual who has a familial or personal relationsip with the employee if the employee complies with such requirements as the Special Counsel shall so prescribe which relate to the disqualification of the employee from engaging in any official activity involving the individual.

(3) The Special Counsel shall prescribe regulations under which paragraph (1) of this subsection shall not apply with respect to any political contribution from a person in situations in which the facts and circumstances indicate there would not be any adverse effect on the integrity of the Government or the public's confidence in the integrity of the Government.

§ 7325. Political activities on duty, etc.; prohibition

(a) An employee may not engage in political activity—

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is—

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in its relations with foreign power or in the nationwide administration of Federal laws.

§ 7326. Candidates for elective office; leave

(a) Except as provided in subsection (c) of this section, an employee who is a candidate shall, upon the request of the employee, be granted leave without pay for the purpose of allowing the employee to engage in activities relating to that candidacy.

(b) Notwithstanding section 6302(d) of this title, and except as provided in subsection (c) of this section, an employee who is a candidate shall, upon the request of the employee, be granted accrued annual leave for the purpose of allowing the employee to engage in activities relating to that candidacy. Leave under this subsection shall be in addition to leave without pay to which the employee may be entitled under subsection (a) of this section.

(c) A request for leave submitted under subsection (a) or (b) of this section may be denied if the exigencies of the public business so require. Any such denial shall be in writing and shall be accompanied by a statement of the reasons why the request is being denied.

(d) An employee may not be required to take leave without pay under subsection (a), or accrued annual leave under subsection (b), in order to be a candidate, unless the activities relating to the candidacy interfere with the employee's performance of the duties of the position.

§ 7327. Regulations

The Special Counsel shall prescribe any rule and regulations necessary to carry out this subchapter.

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 8332. Creditable service

(a) * * *

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(k)(1) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions and that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

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SUBCHAPTER II—BASIC ANNUITY

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§ 8411. Creditable service

(a) * * *

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(e) Credit shall be allowed for periods of *leave without pay granted under section 7326(a) of this title, or* approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to

the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

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CHAPTER 87—LIFE INSURANCE

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§ 8706. Termination of insurance; assignment of ownership

(a) * * *

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(c) Notwithstanding subsections (a) and (b) of this section, an employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

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CHAPTER 89—HEALTH INSURANCE

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§ 8906. Contributions

(a) * * *

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(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave with-

out pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

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§ 602. Solicitation of political contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual selected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; [to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.] *to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.*

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of that title.

§ 603. Making political contributions

(a) * * *

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(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the

Postal Rate Commission, unless that activity is prohibited by section 7324 of that title.

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SECTION 6 OF THE VOTING RIGHTS ACT OF 1965

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b), unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except [the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C 118i), prohibiting partisan political activity] *the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities: Provided,* That the Commisison is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

MINORITY VIEWS ON H.R. 20

As a cosponsor of H.R. 20 I support this effort to allow all American citizens greater freedom in expressing their political beliefs. This may very well be the right time for reform of the Hatch Act, which restricts the partisan political activities of federal employees. The federal employee of 1989 cannot be compared to the civil servant of 1939 to whom politics, and political coercion, was a way of life in the workplace.

However, any bill which affects as many American citizens as this one does must receive full and fair consideration by the House of Representatives. We have a responsibility to our constituencies to carefully review and earnestly debate legislation of this magnitude. I believe that to bring this bill up under suspension of the rules of the House would be a travesty of justice, both for the citizens affected and the Members who have a responsibility to project their views.

The sweeping nature of this bill could have a profound effect on federal employees and private citizens who deal with civil servants. There remains some doubt as to whether there are sufficient safeguards to protect those affected. A recent survey completed by the Federal Employee News Digest (April 89) finds that less than 34% of federal employees actually favor reform of the Hatch Act. This indicates that there remain some reservations about sufficient protection for those who may not want to fully participate in the political process. There are Members of Congress who represent these employees and have specific amendments to offer which would add provisions to assuage the fears of those who will be subject to this legislation. These Members should be heard on the House floor and given an opportunity to plead the cause of those federal employees they represent.

Therefore, my objection to H.R. 20 rests primarily with the means by which this Committee has chosen to submit it to the rest of the House. Suspension of the rules in this case is wrong, and does not serve the public welfare.

DAN BURTON.

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